

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARIA DE LA LUZ GUZMAN-LEPE** )

Claimant )

VS. )

**NATIONAL BEEF PACKING COMPANY,  
LP** )

Respondent )

Docket No. 268,150

AND )

**COMMERCIAL UNION INSURANCE CO.** )

Insurance Carrier )

**ORDER**

**STATEMENT OF THE CASE**

Respondent and its insurance carrier (respondent) requested review of the August 18, 2010, Post Award Medical Decision entered by Administrative Law Judge Pamela J. Fuller. The Acting Director, Seth Valerius, appointed E.L. Lee Kinch to serve as Appeals Board Member Pro Tem in place of retired Board Member Carol Foreman. Stanley R. Ausemus, of Emporia, Kansas, appeared for claimant. Kendall R. Cunningham, of Wichita, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) granted claimant's request for post award medical treatment to be paid by respondent.

The Board has considered the record and adopted the stipulations listed in the Post Award Medical Decision. The Board has also considered the transcript of the Preliminary Hearing held October 15, 2004; the transcript of the Preliminary Hearing held November 17, 2006; the transcript of the deposition of C. Reiff Brown, M.D., held February 5, 2007, and the exhibits; the transcript of the deposition of Ray Dee Rhinehart held March 9, 2007, and the exhibits; the deposition of Doug Lindahl held April 23, 2007, and the exhibits; and the transcript of the deposition of Susan Williams taken March 9, 2007, and the exhibits.

### ISSUES

Respondent argues that claimant's current condition and need for treatment is not a direct and natural consequence of her original injury of July 12, 2001. Accordingly, respondent asks the Board to reverse the ALJ's Post Award Medical Decision.

Claimant argues that the ALJ correctly determined that the evidence established that her present condition and need for medical treatment is a direct result of her 2001 injury, which aggravated and accelerated the degenerative condition in her left knee. Accordingly, her need for a surgical consultation and probable total left knee arthroplasty is compensable in this docketed claim.

The original Agreed Award found that claimant had an approximate 5 percent functional impairment to the left lower extremity. All claimant's rights to future medical treatment remained open, and claimant was to be permitted to receive additional medical benefits upon proper application to the Director.

The issue for the Board's review is: Is claimant's current left knee condition and need for medical treatment a direct and natural consequence of her work-related accident in July 2001?

### FINDINGS OF FACT

Claimant has suffered a number of injuries while working for respondent and has filed nine docketed claims. Of these, four somehow involved her left leg or knee. Claimant has received a lot of treatment for her various injuries and has been treated and examined by many physicians. Claimant does not speak English and uses an interpreter when being examined or treated.

The first accident involving claimant's knee was on May 22, 1999, when claimant claimed an injury to her left leg. The Employer's Report of Accident indicates that claimant alleged an injury to her left leg, but the cause of the injury was unknown.<sup>1</sup>

Claimant was seen on August 25, 1999, by Dr. Dale Darnell. Claimant gave Dr. Darnell a run-down of her accidents at respondent as of the date of the examination. In regard to her accident of May 1999, she indicated she sustained an external rotation twisting injury to her left knee. She did not fall but felt her knee pop. She told Dr. Darnell that she had anterior knee pain that was aggravated by prolonged standing or walking. Going up and down stairs was difficult. Her knee felt unstable but she has never fallen. She cannot squat. On examination of her left knee, Dr. Darnell found that her left knee range of motion was the same as on the right. She had one centimeter of atrophy over the

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<sup>1</sup> Depo. of Susan Williams (March 9, 2007), Ex. 1 at 53.

left vastus medialis. There was no evidence of instability, and the knee was not swollen. She complained of tenderness almost everywhere he palpated but seemed to be most tender over the medial joint line. Her McMurray's test was negative.

On October 14, 1999, claimant was bumped by a forklift and fell, injuring her left lower leg, knee, foot and ankle.<sup>2</sup> She was referred to Dr. Pedro Murati for examination and treatment. She first saw him on November 9, 1999, and her main complaints were neck pain, upper back pain, low back pain, left knee pain and left ankle pain. Examination of the left knee revealed a positive medial McMurray's test, no instability of the knee, medial and lateral apprehension, negative patellar compression, positive tetter, moderate crepitus, and tenderness to the medial tibial plateau. Dr. Murati's impression was that claimant had knee pain with crepitus. He ordered an MRI of the left knee, which was done on November 12, 1999, and which revealed a small subchondral cyst on the proximal tibia, minimal joint effusion, and degeneration strain to the posterior horn of the medial and lateral meniscus. No definite meniscal tear was noted.

Dr. Murati continued to treat claimant for her left knee and other conditions related to the October 1999 accident. She was sent to Dr. Bergeron for a surgical consult regarding her left knee, and no surgery was recommended. On April 24, 2001, Dr. Murati released claimant from his care because there was nothing more he could do for her. His final diagnosis was patellofemoral syndrome of the left knee with crepitus.

On September 29, 2000, claimant was examined by Dr. Raymundo Villanueva at the request of claimant's attorney. Claimant told him her left knee pain was worse and was constant, even at rest. She said the left knee was constantly swollen. Dr. Villanueva found that claimant's left knee did not show inflammation or effusion. She was able to tip toe walk and heel walk and did a one-quarter squat. Dr. Villanueva diagnosed her with left knee pain and recommended an MRI to rule out knee derangement.

On May 29, 2001, claimant slipped and fell in the parking lot, injuring both knees. According to the Employers Report of Accident, claimant was seen by Dr. Taturan and was placed on light duty.<sup>3</sup>

On July 5, 2001, a MRI was performed on claimant's left knee at the request of Dr. Juvenal Jabel. The MRI showed she had a possible linear tear to the posterior horn of the

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<sup>2</sup> An Award was entered in this claim on October 16, 2009, wherein the ALJ found claimant had a 1 percent permanent partial disability for a rib injury. She was not given a rating for her left knee injury. Upon appeal, the Board held that while claimant sustained an accidental injury on October 14, 1999, the claimant sustained no permanent impairment as a result of the injury and only suffered a temporary injury or temporary aggravation of symptoms. See *Guzman-Lepe v. National Beef Packing Company*, No. 248,456, 2010 WL 769911 (Kan. WCAB Feb. 8, 2010). This Order has been appealed to the Kansas Court of Appeals.

<sup>3</sup> Williams Depo., Ex. 1 at 80.

medial meniscus, degeneration to the lateral meniscus, and subchondral cyst in the proximal tibia.

In the claim involved in this appeal, claimant was injured on July 12, 2001, when she fell down some stairs and injured her left knee. Claimant testified that prior to the July 2001 fall, she was not having any problems with her left knee.

After her injury in July 2001, claimant was sent to Dr. Kenneth Jansson for treatment. He first saw her on May 8, 2002. Claimant told Dr. Jansson that she had an injury to her left knee in 1999 that had resolved. She told him that she had an injury in May 2001 where she suffered a twisting injury. Claimant complained of persistent medial pain, trouble with extension, popping, and numbness. She denied trouble with squatting, kneeling, or going up and down stairs. Dr. Jansson's impression was that she had a torn medial meniscus of her left knee with chondromalacia of the patella. On May 23, 2002, he performed surgery on claimant in the form of a partial medial meniscectomy, and lateral retinacular release, chondroplasty, patella and medial formoral condyle.

After claimant's knee surgery, she appeared to be doing well until August 2002, when she told Dr. Jansson she had been hurting. She complained she had popping and pain that kept her up at night, as well as swelling in her knee. After examining her, Dr. Jansson released her without restrictions. On October 7, 2002, claimant returned, and Dr. Jansson gave her an injection in her knee, but it did not relieve her symptoms. Claimant returned on October 28, 2002, and again on May 14, 2003. In May 2003, Dr. Jansson noted claimant had exaggerated pain behaviors, good ligamentous stability, and no warmth. She had a mild effusion in her left knee.

Dr. C. Reiff Brown testified that he examined claimant several times in relation to her left knee, as well as other parts of her body, all at the request of claimant's attorney. He first saw claimant in connection with her left knee on December 13, 2001, at which time she gave him a history of injury to her left knee on May 29, 2001, when a forklift ran over her foot, twisting the knee and causing a severe pain in the medial aspect of the knee.<sup>4</sup> She said she had been treated by Drs. Villanueva, Murati, Darnell and Anasari. She said she continued to have pain in her left knee. She denied catching or locking of the knee. Examination of the left knee revealed mild swelling at the anteromedial aspect of the joint. There was medial joint line tenderness present. Range of motion was normal, and there was no crepitus. The knee was stable to varus valgus stress testing and AP drawer testing. Dr. Brown had reviewed claimant's medical records that indicated she had a torn medial meniscus. He believed the forklift accident started her problems.

Dr. Brown saw claimant next on May 14, 2003. By that time, Dr. Jansson had performed surgery on claimant in May 2002. Dr. Brown presumed the surgery was to repair

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<sup>4</sup> The Employer's Report of Accident for the May 29, 2001, injury indicates that claimant slipped on some water and fell in respondent's parking lot as she was going to work.

the tear of the posterior horn of the meniscus. Claimant complained of ongoing pain in her left knee on weight bearing, as well as intermittent swelling. On examination, he found that tenderness of the knee was non-anatomically present in the peri-patella, both joint lines extending downward to the tibial tubercle level. Range of motion of the left knee was normal and was performed with no crepitus. The knee was stable to varus valgus stress testing and AP drawer testing. The McMurray test was negative for snap but produced pain within the joint on rotary stress in either direction. Dr. Brown opined this was not an indication of additional internal derangement of the joint, and said the knee appeared to be normal. After Dr. Brown re-examined claimant, he concluded she had a 2 percent impairment to her left lower extremity, which was 3 percent lower than his December 2001 conclusion.

Dr. Brown saw claimant again on May 12, 2004. She continued to have complaints relative to most areas of her body, and he examined the areas of which she complained. Examination of the left knee revealed mild medial joint line tenderness. Range of motion was from 0 to 130 degrees and seemed to be performed with no discomfort. There was no fluid in the joint, and no crepitus was palpated. The knee was stable to varus valgus stress testing and AP drawer testing.

In 2005, claimant made a trip to Mexico. She testified that while there, she experienced a sudden onset of pain in her left knee. She sought treatment, and an MRI was taken of her left knee in Mexico. She denied doing any extensive walking while in Mexico and said she only exercised.

Dr. Brown saw claimant again regarding her left knee on January 9, 2007. However, the report from that examination was not made a part of the record in this case. On February 6, 2007, Dr. Brown wrote claimant's attorney, stating: "I can say with reasonable medical certainty that her ongoing progressive and increasing symptomatology involving the left knee are the result of aggravation of preexisting degenerative changes in the work-related injury."<sup>5</sup> He did not identify in the letter which accident caused the injury that aggravated claimant's degenerative changes.

Dr. Brown re-evaluated claimant on July 17, 2007, in regard to her injuries from the October 1999 forklift accident. Claimant gave a history of onset of low back pain but also indicated this accident aggravated her left knee. However, Dr. Brown examined claimant's lumbar spine only. He stated: "I find that the injury in question occurred October 14, 1999 when the forklift struck her from behind. Apparently medical attention was directed toward her left knee and her back was neglected."<sup>6</sup>

Dr. Brown evaluated claimant again on November 4, 2008. In his report, Dr. Brown noted that he had last seen claimant regarding her left knee on January 9, 2007, and said

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<sup>5</sup> Brown Depo., (Oct. 16, 2009), Ex. 4.

<sup>6</sup> Brown Depo. (Oct. 16, 2009), Ex. 3 at 2.

claimant's symptoms had increased since then. Claimant told him she was having more pain in the medial joint line area. She said she was awakened from her sleep because of the pain, has catching and locking frequently when she walked, and had frequent giving way into flexion, although she had not fallen. She told Dr. Brown she is unable to do her housework because of the severe pain, and she never walks much over a block because she would not be able to get home.

Dr. Brown's examination of claimant's left knee showed no inflammation. Tenderness was present, most severely at the medial joint line and to a lesser degree at the lateral joint line anteriorly. She had mild joint effusion. She had a 10-degree flexion contracture present with further flexion to 110 degrees. End range discomfort was present in both directions. Crepitus was present in the peripatellar action on active movement. She had mild peripatellar tenderness. The knee was stable to varus valgus stress testing and AP drawer testing, but there was a laxity of the medial collateral ligament, which Dr. Brown opined was due to decreasing articular cartilage. Claimant walked with an antalgic limp on the left.

Claimant brought with her the MRI scan taken in Mexico. Dr. Brown reviewed the scan and indicated it revealed claimant had severe degenerative arthritic change with cystic disruption of the neural in the medial tibial compartment. Cystic lesion and bone islands were also present in the subarticular area in the medial femoral condyle. Degenerative changes were noted severely in the medial meniscus.

Dr. Brown said that claimant's extensive walking in Mexico could have played a role in her degree of degeneration, although he did not have any history that was the case. But from that point on, claimant complained that she is having more symptoms and is now walking with a limp. He said he would expect the symptoms from walking in Mexico would be temporary, but he did not know for sure that it was.

Dr. Brown opined that claimant was in need of a total knee replacement and recommended that she be referred to an orthopedic surgeon. He further stated: "In my opinion the fall that occurred July 12, 2001 aggravated and accelerated the degenerative disease in [claimant's] left knee."<sup>7</sup> He based his opinion on claimant's history of the injury, and because her degeneration has increased in the left knee but not the right.

In a second deposition, Dr. Brown reviewed medical records provided by respondent's attorney. Dr. Brown agreed that claimant had left knee complaints after her October 1999 accident and had degenerative changes as evidenced by the MRI taken on November 12, 1999. Dr. Brown testified that he could not say within a reasonable medical certainty that but for the July 2001 accident claimant would not need a knee replacement. He thinks that the October 1999 accident involving the forklift and the July 2001 fall both contributed to claimant's knee condition. He believes the July 2001 accident aggravated and accelerated

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<sup>7</sup> Brown Depo. (Oct. 16, 2009), Ex. 2 at 2.

claimant's degenerative condition. He testified that without the July 2001 injury, claimant would still have needed a total knee replacement, but he thinks it would have been later in her life.

#### PRINCIPLES OF LAW

K.S.A. 2009 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2009 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

In a post award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the effects of the original accidental injury which was the subject of the underlying award.<sup>8</sup>

When dealing with preexisting medical conditions, the test is not whether the accident at work caused or created the condition but, instead, whether the accident aggravated or accelerated the condition. The Kansas Supreme Court in *Strasser*<sup>9</sup>, wrote in pertinent part:

The workmen's compensation act prescribes no standard of health for workmen, and where a workman sustains an accidental injury arising out of and in the course of his employment he is not to be denied compensation merely because of a pre-existing physical condition, for it is well settled that an accidental injury is compensable where the accident serves only to aggravate or accelerate an existing disease or intensifies the affliction.<sup>10</sup>

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*,<sup>11</sup> the court held:

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<sup>8</sup> See K.S.A. 2009 Supp. 44-510k(a).

<sup>9</sup> *Strasser v. Jones*, 186 Kan. 507, Syl. ¶ 2, 350 P.2d 779 (1960).

<sup>10</sup> *Id.*, Syl. ¶ 2.

<sup>11</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972).

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

In *Logsdon*,<sup>12</sup> the Kansas Court of Appeals reiterated the rules found in *Jackson* and *Gillig*<sup>13</sup>:

Whether an injury is a natural and probable result of previous injuries is generally a fact question.

When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to postaward medical benefits.

#### ANALYSIS

Respondent acknowledges in its brief that "the issue is whether the claimant's current need for medical treatment is causally related to her accidental injury occurring in 2001."<sup>14</sup> But respondent goes on to challenge the ALJ's conclusions "that the 2001 injury aggravated or accelerated the degenerative condition in the knee."<sup>15</sup> It must be remembered that in the August 20, 2008, Agreed Award, the parties stipulated that claimant sustained personal injury by accident and that her resulting injury arose out of and in the course of employment. The parties further agreed that claimant suffered a permanent impairment to her left lower extremity per the diagnosis and ratings of Drs. Jansson, Brown and Murati. Furthermore, respondent agreed to pay all medical treatment expenses it had authorized through the date of the Agreed Award. Therefore, the causal relationship between claimant's knee problems in August 2008 and the accidental injury of July 12, 2001, cannot now be relitigated or disputed. There is nothing in this record to indicate that claimant suffered an intervening accident and injury. Rather, it was the natural progression of the degenerative process superimposed on prior injuries that has

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<sup>12</sup> *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006); see also *Leitzke v. Tru-Circle Aerospace*, No. 98,463, unpublished Court of Appeals opinion filed June 6, 2008.

<sup>13</sup> *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

<sup>14</sup> Respondent's brief at 1 (filed Sept. 7, 2010).

<sup>15</sup> *Id.*



resulted in claimant's present condition. The most recent injury to aggravate and accelerate claimant's degenerative condition is that of July 2001. And despite the fact that claimant would have most likely needed a knee replacement eventually even without the 2001 injury, the record as a whole persuades the Board that the 2001 injury aggravated the degenerative process and accelerated her need for treatment.

**CONCLUSION**

Claimant's current left knee condition is compensable as a direct and natural consequence of her July 12, 2001, injury.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Post Award Medical Decision of Administrative Law Judge Pamela J. Fuller dated August 18, 2010, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December, 2010.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge